147.

SUPREME COURT OF THE UNITED STATES.

No. ~~108.~~ 21.

MORGAN BYRNE, PLAINTIFF IN ERROR,

VERSUS

THE STATE OF MISSOURI.

IN ERROR TO THE SUPREME COURT FOR THE FOURTH JUDICIAL DISTRICT OF MISSOURI.

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UNITED STATES OF AMERICA, ss.—*The President of the United States of America to the honorable the judges of the supreme court for the fourth judicial district of the State of Missouri, greeting:*

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Missouri, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the

State of Missouri, plaintiff, and Morgan Byrne and Charles Seavers, defendants, wherein is drawn in question the validity of a statute of the said State of Missouri, on the ground of its being repugnant to the constitution of the United States, and the decision was in favor of such, its validity; and wherein was also drawn in question the construction of a clause of the constitution of the United States, and the decision was against the exemption set up under such clause, a manifest error hath happened to the great damage of the said Morgan Byrne and Charles Seavers, defendants as aforesaid, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable John Marshall, chief justice of the said Supreme Court, the first Monday of August, in the year of our Lord one thousand eight hundred and thirty.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, ss.—*To the State of Missouri, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court for the fourth judicial district of the State of Missouri, wherein the State of Missouri is plaintiff, and Morgan Byrne and Charles Seavers are defendants, to show cause, if any there be, why judgment rendered against the said Morgan Byrne and Charles Seavers, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Matthias McGirk, president of the supreme court for the State of Missouri, May 10, 1831.

M. McGIRK.

On this tenth day of September, in the year of our Lord eighteen hundred and thirty-one, personally appeared John C. Gorden, before me, the subscriber, a justice of the peace for Cole county, State of Missouri, and makes oath that he delivered a true copy of the above citation to John Miller, governor of the State of Missouri, and to Robert W. Wells, attorney general of said State, on this 10th day of September, 1831, at the city of Jefferson, county of Cole, and State of Missouri.

HIRAM H. BABER,
Justice of the Peace of Cole county, State of Missouri.

Know all men by these presents, that we, Morgan Byrne, Charles Seavers, and Thomas W. Graves, are held and firmly bound unto the State of Mis

souri, in the full and just sum of two hundred dollars, to be paid to the said the State of Missouri, certain attorney or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this tenth day of September, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas, lately at a supreme court for the fourth judicial district of the State of Missouri, in a suit depending in said court, wherein the State of Missouri was plaintiff, and Morgan Byrne and Charles Seavers were defendants, judgment was rendered against the said Morgan Byrne and Charles Seavers, and the said Morgan Byrne and Charles Seavers having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said, the State of Missouri, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of January next:

Now, the condition of the above obligation is such, that if the said Morgan Byrne and Charles Seavers shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

MORGAN BYRNE, [SEAL.]
CHARLES SEAVERS, [SEAL.]
THOS. W. GRAVES, [SEAL.]

Sealed and delivered in the presence of
JOHN D. COOK.

Term.

Pleas at the circuit court of the county of Cape Girardeau, in the State of Missouri, held at Jackson, in the fourth judicial circuit of said State, of the term of August, in the year of our Lord one thousand eight hundred twenty-six, and of the independence of said State the seventh year, before the honorable John D. Cook, judge of the circuit courts in the said circuit.

Time of filing.

Be it remembered, that, on the 11th day of July, in the year aforesaid, was filed with the clerk of said circuit court, a certain declaration and precipe, which are in the following words, to wit:

Declaration.

STATE OF MISSOURI, *Fourth judicial circuit, ss:*

In the circuit court for the county of Cape Girardeau, August term, in the year of our Lord one thousand eight hundred and twenty-six, the State of Missouri complains of Morgan Byrne, of a plea of breach of covenant, for that whereas, heretofore, to wit, at the county of Cape Girardeau aforesaid, in the State aforesaid, on the twenty-sixth day of October, in the year eighteen hundred and twenty-two, the said Morgan Byrne, by the same style and description of Morgan Byrne, executed his certain writing obligatory, sealed with his seal, and to the court now here shown, the date whereof is the day and year last aforesaid, by which he promised to pay to the

State of Missouri, on the twenty-sixth day of October, in the year of our Lord eighteen hundred and twenty-three, the sum of one hundred and thirty-five dollars, and the two per centum per annum on said amount, it being the interest accruing on the certificates borrowed, (borrowed by said Byrne of said State,) from the first day of October, eighteen hundred and twenty one, at the Jackson loan office, for value received. Yet the said defendant, not at all regarding his covenant and liability as aforesaid, did not pay to the said State of Missouri, on the said twenty-sixth day of October, eighteen hundred and twenty-three, the said sum of thirty-five dollars and the two per centum per annum on said amount accruing on the certificates borrowed, from the first day of October, eighteen hundred and twenty-one, at the Jackson loan office, according to the form and effect of said writing; nor has the said defendant, at any time, paid to the said State of Missouri, the said sum of one hundred and thirty-five dollars, and the two per centum per annum on said amount, the interest accruing on the certificates borrowed from the said first day of October, eighteen hundred and twenty one, but to pay the same, had hitherto wholly neglected; and so the said State saith that the said defendant, although often requested, had kept his said covenant so by him made as aforesaid, but hath broken the same, and the same to keep hath hitherto wholly refused, and still doth refuse, to the damage of the said State of Missouri two hundred dollars, and therefore suit is brought, &c.

GREER W. DAVIS,
Attorney for State.

The clerk will endorse this, an action of covenant, issue summons, and no bail required.

G. W. DAVIS,
Attorney for the State.

Summons.

STATE OF MISSOURI—*Fourth judicial circuit, ss.—The State of Missouri to the Sheriff of the county of Cape Girardeau, greeting:*

These are to command you to summon the within named Morgan Byrne to appear before our judge, at our circuit court, at a court to be held at Jackson, within and for the county of Cape Girardeau, on the second Monday of August next, to answer to the within named State of Missouri, of the within complaint. Witness, Ralph Daugherty, clerk of our said court, at office, the eleventh day of July, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first year.

R DAUGHERTY, *Clerk.*
By his deputy, HY. SANFORD.

Sheriff's return.

On which said summons the sheriff made his return in the following words—"Executed this writ on Morgan Byrne, in Cape Girardeau township, 20th July, 1826."

JESSE HAIL, *Deputy for*
WILLIAM CREATH, *Sheriff.*

At the term aforesaid, on the 10th day of said term, the following proceedings were had before the said court in the suit aforesaid.

Appearance Term.

THE STATE OF MISSOURI, *versus* MORGAN BYRNE. } *Covenant.*

The parties appear, and, by consent, the defendant is permitted to plead at the next term of this court, as of this term and this cause is continued. Afterwards, to wit, at the term of December, in the year aforesaid, before the judge aforesaid, on the 21st day of the said month of December, in the said year, the plaintiff filed his plea in the following words:

Plea.

STATE OF MISSOURI:

MORGAN BYRNE, *adsm.* STATE OF MISSOURI, } *Cape Girardeau circuit court.*

And the said defendant, by Bird, his attorney, comes and defends the wrong and injury to him *to*, and says said plaintiff *out* not to have and maintain its said action against him, because he says that the said State of Missouri, by an act of the Legislature thereof, entitled "An act for the establishment of loan offices," approved by the governor of said State on the 27th day of June, 1821, divided said State into five districts, in each of which districts was established a loan office; and by said act the auditor of public accounts and treasurer of said State, under the governor thereof, were required to issue certificates, signed by the said auditor and treasurer, to the nominal amount of $200,000, of denominations not exceeding ten dollars, nor less than fifty cents, in the following form, to wit: "This certificate shall be receivable at the treasury or any of the loan offices of the State of Missouri, in discharge of taxes or debts due to the State, for the sum of dollars, with interest for the same at the rate of two per centum, from this date, the day of , 1-2 ." And that by said act, said certificates were made receivable at the treasury of said State, and by all the tax gatherers, and other public officers, in payment of taxes and other moneys then due, or to become due to said State, or any county or town therein, and by all officers, civil and military, in said State, in discharge of salaries: and by said act, it was further made the duty of said auditor and treasurer, according to the provisions of said act, to deliver to the clerk of the said general loan offices, a proportionable amount of the certificates by said act required to be issued as aforesaid; and certain commissioners, by said act required to be appointed, were, by said act, empowered to loan said certificates to the citizens of said State residing within their respective districts, at interest not exceeding six per centum per annum on the amount, and to secure the repayment of said loans by mortgages or personal security: and by said act, the salt springs belonging to the *estate* were to be leased out, on the condition that the lessee or lessees should receive said certificates in payment for salt, not exceeding that which might be prescribed by law; and that the proceeds of said salt springs, the interest accruing to the State, and

all estates purchased by the officers of the said loan offices under the provisions of said act, and all debts then due and *become* due to said State, were, by said act pledged and made a fund for the redemption of said certificates: and by the same act, the faith of said State was also pledged for the same purpose. And said defendant further saith, that, pursuant to the provisions of said act, a large amount of said certificates, to wit, the nominal sum of $50,000 was deposited in the said loan office at Jackson, to be loaned out by commissioners appointed pursuant to said act, to such individuals as should make application for a loan of said certificates, according to the provisions of said act: and the said defendant further saith, that he has received from said loan office at Jackson, the nominal sum of one hundred and thirty-five dollars in said certificates, for the loan of which certificates, and no other consideration whatever, the said defendant made and executed to said State said writing obligatory mentioned; and said defendant *aver* that said loan office certificates, so loaned to said defendant as aforesaid, were bills of credit, entitled by said State in violation of the constitution of the United States; all of which said defendant is ready to verify: wherefore said defendant prays judgment, if said State ought to have and maintain its said action against him be

G. BIRD,
Attorney for defendant.

Demurrer.

And the said State comes and demurs to said plea, and says it is bad in law; and that the matters and things therein stated require no answer, wherefore plaintiff prays judgment for want of a sufficient plea.

GREER W. DAVIS,
Attorney for State.

Joinder in Demurrer.

And said Byrne comes and says that his said plea is good in law, and sufficient to bar said State from having and maintaining its said action.

At the term aforesaid, on the 11th day of said term, before the same judge, the following proceedings were had by the parties aforesaid.

Term of Judgment.

THE STATE OF MISSOURI, *versus* MORGAN BYRNE. } *Covenant.*

The plaintiff, by Greer W. Davis, esq., comes, and the defendant, by his attorney, appears, and the demurrer to the defendant's plea herein being seen and argued, the court doth consider that the matters and things in said plea mentioned and contained are not sufficient in law to bar and preclude the said plaintiff from having and maintaining his action against said defendant: therefore it is considered and adjudged that the said plaintiff do have and recover against said defendant, Morgan Byrne, her damages, to the sum of one hundred and fifty-two dollars and seventy-two cents, which she has sustained by said defendant not performing his said covenant, together with her costs and charges in this behalf expended; and the said defendant in mercy, &c., &c.

Form of Writing Obligatory. 133.

The writing obligatory on which this suit is founded, is in the following words, to wit: We jointly and severally promise to pay to the State of Missouri, on the twenty-sixth day of October, in the year of our Lord eighteen hundred and twenty three, the sum of one hundred and thirty-five dollars, and the two per centum per annum, the interest accruing on the certificates borrowed from the first day of October, eighteen hundred and twenty-one, at the Jackson loan office, for value received, this 20th day of October, 1822.

MORGAN BYRNE, [L. S.]
ROBERT GREEN.
THOMAS W. GRAVES.

Date of Execution.

Afterwards, on the 5th day of February, A. D. 1826, execution issued on the aforesaid judgment, against the aforesaid Morgan Byrne, for the sum of one hundred and fifty-two dollars and seventy cents, the amount of the damages in the aforesaid judgment specified: also, for the sum of eleven dollars eighty-one and a fourth cents, the costs of said suit; which said execution is in the hands of the sheriff of said county of Cape Girardeau.

Costs of Suit.

Damages - - - - - -	$152 72
Attorney, Davis - - - - -	5 00
Tax on original writ - - - -	1 00
Tax on original execution - - -	1 00
Clerk, R. Daugherty - - - -	3 81¼
Sheriff, William Creath - - - -	1 00
	$164 53¼

One hundred and sixty-four dollars fifty-three and one-fourth cents.

STATE OF MISSOURI, *Fourth judicial circuit, ss.*

I, Ralph Daugherty, clerk of the circuit court within and for said county of Cape Girardeau, in said circuit, certify that the six foregoing pages contain a full, true, and perfect transcript of the record and proceedings of the plaint aforesaid, as fully and completely as the same remains of record in said court.

[L. S.] In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at office, this 17th day of February, 1827.

R. DAUGHERTY, *Clerk.*
By his deputy, HY. SANFORD.

Tax - - - - - -	$1 00
Copying 2,200 words - - - -	2 20
Certificate and seal - - - - -	50
	$3 70

Received of Morgan Byrne three dollars and seventy cents on account of this record, in full.

HY. SANFORD, *Deputy clerk.*

Filed March 27th, 1827.

P. R. GARRETT, *Clerk.*
By his deputy, HY. SANFORD.

Writ of Error.

THE STATE OF MISSOURI, *Fourth judicial district—The State of Missouri to the circuit court of the county of Cape Girardeau, in said State, greeting:*

Because, in the record and proceedings in the circuit court for the said county of Cape Girardeau, before our judge thereof, at the suit of the State of Missouri, plaintiff, against Morgan Byrne, defendant, in an action of covenant, manifest error hath intervened to the great damage of the said Morgan Byrne, as by his complaint we are informed; and we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment thereon be given, then you send to the judges of the supreme court of said State, distinctly and openly, under your seal, the record and proceedings in the action aforesaid, with all things concerning the same, and this writ, that the same may before the judges of our said supreme court, at their next term, to be held for the fourth judicial district aforesaid at the town of Jackson, in the county of Cape Girardeau aforesaid, on the fourth Monday of May next, that the record and proceedings aforesaid being seen and examined, may cause to be done therein, for correcting that error, what of right ought to be done.

[L. S.] Witness, Peter R. Garrett, clerk of our said supreme court, at office, this 26th day of February, A. D. 1827.

HY. SANFORD, *Deputy for*
PETER R. GARRETT, *Clerk.*

Return returned and filed March 27, 1827.

P. R. GARRETT, *Clerk,*
By HY. SANFORD, *Dep. Clerk.*

Placita, May Term, 1827.

Pleas at the supreme court of the State of Missouri, held for the fourth judicial district thereof, at the town of Jackson, in the county of Cape Girardeau, of the term of May, in the year of our Lord one thousand eight hundred and twenty seven, before the honorable Matthias M'Girk, and the honorable Robert Wash, judges of said supreme court.

Date of Filing.

Be it remembered, that on the 27th day of March, in the year aforesaid, was filed with the clerk of said supreme court, a certain record from the circuit court of the county of Cape Girardeau, of an action of covenant between Morgan Byrne, plaintiff, and the State of Missouri, defendant, in error.

Errors assigned. 157

On the seventeenth day of May, in the year aforesaid, a certain assignment of errors, and joinder therein, were filed as follows:

STATE OF MISSOURI, *Supreme court at Jackson.*

MORGAN BYRNE, *versus* THE STATE OF MISSOURI. } *On error from the Cape Girardeau circuit court, May term, A. D.* 1827.

And said Morgan comes and says, that, in the record and proceedings aforesaid, and also in the rendition of judgment in said suit, there is manifest error in this, that said circuit court gave judgment for said State, when, by the law of the land, judgment should have been given for said Morgan, and for the error aforesaid, and others apparent in the record and proceedings in the said cause, said Morgan prays that said judgment may be reversed, and that he may be restored to all things which he has lost by occasion of said judgment, &c.

G. A. BIRD,
Att'y for plaintiff in error.

Joinder in Error.

And the said plaintiff says, that in the proceedings in the above cause there is no error.

G. W. DAVIS, *C. A.*

At the term of May, of said supreme court, in the year of our Lord one thousand eight hundred and twenty-seven, the following proceedings were had before the judges last aforesaid.

Judgment.

MORGAN BYRNE, *versus* THE STATE OF MISSOURI. } *Covenant in error.*

The parties, by their attorneys, come, and the court being now sufficiently advised of and concerning the premises, and the record, proceedings, and judgment aforesaid being seen, and the matters aforesaid for error assigned and joined, being heard and argued, and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the court here that there is no error, either in the record, proceedings, or judgment aforesaid; therefore, it is considered by the court here that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force, the matters aforesaid for error assigned notwithstanding; and that the defendant have and recover of and from the plaintiff, as well her costs and charges in the circuit court aforesaid, as also her costs in this court in this behalf expended, &c., and that execution be issued therefor.

The following is the opinion of the court in the foregoing case:

Opinion.

THE STATE,
versus
MORGAN BYRNE.
THE STATE,
versus
JAMES EVANS.

In these two cases the judgment of the circuit court is affirmed, on the ground that this principle has often been adjudicated and settled by this court in the same way. See the case of Graves *vs.* Mansker, at St. Louis, State and Loper, and many others.

M. McGIRK,
R. WASH,
Judges.

STATE OF MISSOURI, *Fourth judicial district, ss.*

I, Peter R. Garrett, clerk of the supreme court for the fourth judicial district of said State, do certify that the foregoing eleven pages comprise a full, complete, and perfect copy of the record of the proceedings in the above case, in said supreme court, as also a copy of the opinion of the court in said case, and also a copy of the record of the original proceedings in said suit, in the circuit court for the county of Cape Girardeau, in said State of Missouri, here filed; and that duplicates of the writ of error, citation, and bond, are duly filed in my office.

In testimony whereof, I have hereunto set my hand and official seal of office, this first day of November, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the fifty-sixth.

[SEAL.]

PETER R. GARRETT, *Clerk.*

Clerk Garrett's fees.

For this record, &c. - - - -	$4 07½
Tax on certificate and seal - - - -	1 00
	$5 07½

Received payment,
P. R. GARRETT.